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10 Attorneys for Defendant
11 UNITED NATIONAL INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO/OAKLAND DIVISION

15 FIREMAN'S FUND INSURANCE
16 COMPANY,

17 Plaintiff,

18 v.

19 UNITED NATIONAL INSURANCE
20 COMPANY and DOES 1 through 10.

21 Defendants.

Action No.: C 07-04943 JL

CERTIFICATE OF SERVICE OF NOTICE
OF REMOVAL UNDER 28 U.S.C. §
1441(b)

22 I, Fatima Puente, declare and certify as follows:

23 I am over the age of 18 years and not a party to this action. My business address is
24 44 Montgomery Street, 18th Floor, San Francisco, California, where the mailing described
25 below took place.

26 On September 24, 2007, I deposited in the United States Mail at San Francisco,
27 California, in a postage prepaid envelope addressed to plaintiff's attorneys, Christopher J.
28 Borders, Casey A. Hatton, Hinshaw & Culbertson LLP, One California Street, 18th Floor,

San Francisco, CA 94111, copies of the following documents:

1. Notice of Removal to Federal Court, dated September 24, 2007.
2. State Court Notice of Removal Of Action to Federal Court Under 28 U.S.C. § 1441(b), dated September 24, 2007.
4. Civil Cover Sheet.
5. Notice of Assignment to United States Magistrate Judge For Trial.
6. Order Setting Initial Case Management Conference and ADR Deadlines.
7. U.S. District Court Northern California ECF Registration Information Handout.
8. Document entitled "Welcome to the U.S. District Court San Francisco."
9. List of judges and magistrate judges.

A true and correct copy of the State Court Notice of Removal of Action to Federal Court Under 28 U.S.C. § 1441(b), dated September 24, 2007, is attached to this Certificate.

I declare and certify under penalty of perjury that the foregoing is true and correct.
Executed September 26, 2007, at San Francisco, California.

By: _____

Fatima Puente
Fatima Puente

1 JAMES C. NIELSEN (111889)
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10 Attorneys for Defendant
11 UNITED NATIONAL INSURANCE COMPANY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED JURISDICTION

15 FIREMAN'S FUND INSURANCE
16 COMPANY,

17 Plaintiff,

18 v.

19 UNITED NATIONAL INSURANCE
20 COMPANY and DOES 1 through 10.

21 Defendants.

Action No.: CV073974

STATE-COURT NOTICE OF REMOVAL
OF ACTION TO FEDERAL COURT UNDER
28 U.S.C. § 1441(b)

22 TO THE CLERK OF THE COURT, TO PLAINTIFF AND TO ALL COUNSEL
23 OF RECORD:

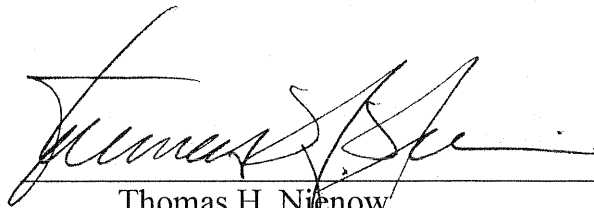
24 PLEASE TAKE NOTICE that defendant United National Insurance Company has
25 filed a Notice of Removal of this action, pursuant to 28 U.S.C. § 1441(b), in the United
26 States District Court for the Northern District of California. United National filed the
27 Notice of Removal on September 24, 2007, and the Federal Court has assigned the matter
28 Action No. C 07-04943 JL. A true and correct copy of the Notice of Removal is attached

1 hereto.

2 NIELSEN, HALEY & ABBOTT LLP

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4
5 Dated: September 24, 2007

By:



6 Thomas H. Nienow

7 Attorneys for Defendant

8 UNITED NATIONAL INSURANCE COMPANY
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RICHARD W. WIEKING
CLERK: U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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E-Filed

Attorneys for Defendant
UNITED NATIONAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JL

FIREMAN'S FUND INSURANCE
COMPANY,

Plaintiff,

v.

UNITED NATIONAL INSURANCE
COMPANY and DOES 1 through 10.

Defendants.

Action No.: **C 07 4943**

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant United National Insurance Company, pursuant to 28 U.S.C. § 1441(b), removes to this Court the state court action described below.

1. On August 21, 2007, plaintiff Fireman's Fund Insurance Company filed in the Superior Court of the State of California in and for the County of Marin, an action styled *Fireman's Fund Insurance Company v. United National Insurance Company et al.*, Marin County Superior Court Action No. CV073974 (the "*Fireman's Fund* action"). A

1 true and correct copy of the complaint in the *Fireman's Fund* action is attached hereto.

2 2. Defendant United National Insurance Company first received notice of the
3 *Fireman's Fund* action on August 28, 2007.

4 3. The *Fireman's Fund* action is a civil action of which this Court has original
5 jurisdiction under 28 U.S.C. § 1332(a), and is one which may be removed to this Court by
6 defendant United National pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a
7 civil action between citizens of different states and the matter in controversy exceeds the
8 sum of \$75,000, exclusive of interest and costs.

9 4. The *Fireman's Fund* action concerns insurance-coverage issues arising from
10 underlying litigation styled *Tracy v. Lovelace Sandia Health Services et al*, State of New
11 Mexico Second Judicial District Court, County of Bernalillo, Action No. CV 2005 07009
12 (the "*Tracy* action"). The *Tracy* action has settled and the issues raised by the *Fireman's*
13 *Fund* action can have no effect on the *Tracy* action. United National is informed and
14 believes that Fireman's Fund seeks, at the least, reimbursement of \$399,000, which, along
15 with \$100,000 paid by United National, Interstate Fire & Casualty Company, Fireman's
16 Fund's subsidiary or affiliate, contributed to settle the *Tracy* action. The *Fireman's Fund*
17 action is, therefore, not a mere declaratory-judgment action subject to the Court's
18 discretionary jurisdiction. *See, e.g., Snodgrass v. Provident Life and Acc. Ins. Co.*, 147
19 F.3d 1163, 1167 (9th Cir. 1998) ("the essence of this case is a suit for damages[;] the
20 district court's dismissal under the Declaratory Judgment Act constituted an abuse of
21 discretion"); *HS Services, Inc. v. Nationwide Mut. Ins. Co.* (9th Cir. 1997) 109 F.3d 642,
22 644 n. 1 ("This action does not implicate the prudential concerns of *Employers Reins.*
23 *Corp. v. Karussos*, 65 F.3d 796 (9th Cir. 1995), and *American Nat'l Fire Ins. Co. v.*
24 *Hungerford*, 53 F.3d 1012 (9th Cir. 1995), because this is not a declaratory relief action
25 and the underlying state court action has ended); *Maryland Cas. Co. v. Knight*, 96 F.3d
26 1284, 1289 (9th Cir. 1996) ("The federal action here is neither 'reactive' to, nor
27 duplicative of, any parallel state proceeding").

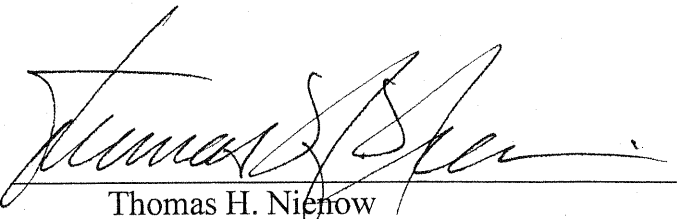
28 5. Defendant United National is informed and believes that plaintiff Fireman's

1 Fund was, at the time the *Fireman's Fund* action was filed, and still is, a California
2 corporation having its principal place of business in California. Defendant United National
3 was, at the time the *Fireman's Fund* action was filed, and still is, a Pennsylvania
4 corporation having its principal place of business in Bala Cynwyd, Pennsylvania. United
5 National is informed and believes that no other defendants have been named or served in
6 this matter.

7
8 NIELSEN, HALEY & ABBOTT LLP

9
10 Dated: September 24, 2007

11 By:



12 Thomas H. Nienow

13 Attorneys for Defendant

14 UNITED NATIONAL INSURANCE COMPANY
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HINSHAW & CULBERTSON LLP Fax: 415-834-9070

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FILED

AUG 21 2007

CHRISTOPHER J. BORDERS (SBN 135901)
CASEY A. HATTON (SBN 246081)
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Attorneys for Plaintiff

FIREMAN'S FUND INSURANCE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

UNLIMITED JURISDICTION

FIREMAN'S FUND INSURANCE
COMPANY,

Plaintiffs,

vs.

UNITED NATIONAL INSURANCE
COMPANY, and DOES 1 - 10

Defendants.

Case No. CV 073974 **BY FAX**

COMPLAINT FOR:

- (1) DECLARATORY RELIEF:
DEFENSE COSTS
- (2) DECLARATORY RELIEF:
INDEMNITY EXPENSES
- (3) EQUITABLE INDEMNITY
- (4) EQUITABLE CONTRIBUTION
- (5) EQUITABLE SUBROGATION

Plaintiff Fireman's Fund Insurance Company ("FIREMAN'S FUND"), on information and
belief, alleges as follows:

NATURE OF ACTION

This is a civil action for declaratory judgment, equitable indemnity, equitable contribution,
and equitable subrogation seeking a declaration of the rights, duties and liabilities of the parties
under certain insurance policies issued by FIREMAN'S FUND, defendant United National
Insurance Company ("UNITED NATIONAL"), and DOES 1 - 10, and for an order directing
UNITED NATIONAL and DOES 1 - 10 to pay damages and restitution.

1. FIREMAN'S FUND seeks a declaration that UNITED NATIONAL and DOES 1 - 10
had an obligation to defend and/or indemnify the mutual insured of the parties, Cirrus Medical
Staffing, Inc., (the "Insured") with respect to the claims asserted against the Insured, as more

1 specifically described in paragraphs 6 through ___ below, relating to the tort claims of Ben Tracy as
 2 set forth in the action filed with the New Mexico Second Judicial District, case number CV 2005
 3 07009 and entitled *Ben Tracy, as personal representative of the Estate of Marilyn Tracy v. Lovelace*
 4 *Sandia Health Services, et al.* ("Underlying Action")

5 2. Defendants DOES 1 through 10, inclusive, are sued herein by fictitious names
 6 because FIREMAN'S FUND does not know the true names, capacities or specific activities of said
 7 defendants at this time; but alleges that each of said defendants is or may be legally liable to
 8 FIREMAN'S FUND, and therefore FIREMAN'S FUND will insert the true name, capacity, and/or
 9 activities of said defendants when they are ascertained.

10 3. An actual and justiciable controversy exists among and between FIREMAN'S
 11 FUND, UNITED NATIONAL and DOES 1 - 10 over the rights, duties, and obligations of the
 12 parties arising out of the terms, conditions, exclusions, and provisions of the insurance policies
 13 issued by each of the parties to the Insured, with respect to the defense and indemnification of the
 14 Insured for the claims set forth in the Underlying Action, including, without limitation, the claims
 15 described below in paragraphs 6 through ___ of this complaint.

16 PARTIES

17 4. Plaintiff FIREMAN'S FUND is an insurance company incorporated in California
 18 with its principal place of business in California.

19 5. Defendant UNITED NATIONAL is an insurance company with its principal place of
 20 business in Pennsylvania. On information and belief, FIREMAN'S FUND alleges that UNITED
 21 NATIONAL is authorized to and conducts business in the state of California.

22 GENERAL ALLEGATIONS

23 6. FIREMAN'S FUND issued a claims-made professional liability policy to the Insured.

24 7. UNITED NATIONAL issued a claims-made professional liability insurance policy to
 25 the Insured for the policy period January 27, 2006 through January 27, 2006.

26 8. On October 7, 2004, Marilyn Tracy died while in the care of Lovelace Sandia Health
 27 Services d.b.a. Albuquerque Regional Medical Center ("the Medical Center"). Thereafter, in 2005,

28 //

1 Ben Tracy brought the Underlying Action against the Medical Center alleging that Marilyn Tracy
2 died due to the negligence of several registered nurses including Registered Nurse Cathy Robinson.

3 9. The Underlying Action alleges that several registered nurses, including Registered
4 Nurse Cathy Robinson negligently failed to monitor Marilyn Tracy's fluid signs, vital signs and
5 oxygen saturations, failed to respond to Tracy's worsening vital signs, and failed to notify the
6 physician that Tracy's condition was worsening.

7 10. On March 21, 2006, Plaintiff Tracy amended the Underlying Action to add the
8 Insured as a defendant based on allegations that the Insured contracted with the Medical Center to
9 provide the Medical Center with medical staff. At the time of Tracy's death, Nurse Cathy Robinson
10 was employed by, or contracted with, the Insured to provide nursing services to the Medical Center.

11 11. After receiving service of the Complaint, the Insured tendered its defense and
12 indemnity to FIREMAN'S FUND. FIREMAN'S FUND agreed to defend the Insured under a
13 reservation of rights.

14 12. The Insured also tendered its defense and indemnity to UNITED NATIONAL. On
15 October 6, 2006, UNITED NATIONAL agreed to defend the Insured under a reservation of rights.

16 13. Thereafter, FIREMAN'S FUND and UNITED NATIONAL engaged in a joint
17 defense of the Underlying Action on behalf of their mutual Insured.

18 14. However, on February 13, 2006, UNITED NATIONAL informed the Insured and
19 FIREMAN'S FUND that was disclaiming any obligation to indemnify the insured for the claims in
20 the underlying action and was withdrawing from the joint defense of the Underlying Action.

21 15. FIREMAN'S FUND is informed, and believes, that UNITED NATIONAL
22 disclaimed coverage based, in part, on its erroneous interpretation of the definition of "claim" in its
23 policy.

24 16. The UNITED NATIONAL policy defines "Claim" as

25 [A] written demand upon the insured for 'compensatory damages', including, but not
26 limited to, the service of 'suit' or institution of arbitration proceedings against the
27 insured. *'Claim' includes reports of accidents, acts, errors, occurrences, offenses or*
28 *omissions which may give rise to a 'claim' under this policy. (Emphasis added).*

1 17. UNITED NATIONAL may not disclaim coverage based on its tautological definition
2 of "claim." This contract provision is ambiguous because it purports to define a term, but illogically
3 reincorporates the term itself in the definition, rendering the definition nonsensical and ambiguous.
4 UNITED NATIONAL may not disclaim coverage for the Underlying Action based on this
5 ambiguous term.

6 18. Furthermore, UNITED NATIONAL'S policy states that a "claim" must be written.
7 No "written demand" was made on the Insured prior to the inception of the UNITED NATIONAL
8 policy. UNITED NATIONAL may not disclaim coverage for the Underlying Action based on its
9 definition of "claim."

10 19. FIREMAN'S FUND is informed, as believes, that UNITED NATIONAL also
11 disclaimed coverage based, in part, on the contradictory "other insurance" provisions in its policy.

12 20. UNITED NATIONAL'S Insuring Agreement provides, in pertinent part, that,

13 This insurance applies to injury only if a "claim" for damages to which no other
14 insurance applies, because of the injury is first made against the insured and reported
to us during the "policy period."

15 21. The UNITED NATIONAL policy's Liability Conditions provide in pertinent part,
16 Other Insurance

17 If other valid and collectible insurance with any other insurer is available to the
18 insured covering a "claim" also covered hereunder (except insurance purchased to
19 apply in excess of the limit of liability hereunder), this insurance will be excess of,
and not contribute with, such insurance.

20 22. UNITED NATIONAL may not disclaim coverage based on these contradictory and
21 ambiguous provisions. On the one hand, the Insuring Agreement appears to state that the policy will
22 not apply at all when other insurance is available. The "Other Insurance" Condition states in direct
23 contradiction, that the policy will apply as excess coverage when other insurance is available. When
24 read together, these policy provisions are at odds with each other and render both provisions
25 ambiguous.

26 23. In addition, UNITED NATIONAL may not disclaim coverage based on its "other
27 insurance" provisions because FIREMAN'S FUND'S policy also contains an "other insurance"
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1 provision which similarly provides that its policy will be in excess of other insurance. United
2 National's "other insurance" clauses must be disregarded.

3 24. FIREMAN'S FUND is informed, as believes, that UNITED NATIONAL also
4 disclaimed coverage based, in part, on its insufficient reservation of the right to change its position
5 regarding coverage based on "any alternative and/or additional basis in the event that factual
6 evidence develops or is presented as relates to you or you practice." UNITED NATIONAL may not
7 disclaim coverage based on its reservation of rights because no new or additional factual evidence
8 developed or was presented after October 6, 2006 that would provide an alternative and/or additional
9 basis to disclaim coverage. UNITED NATIONAL has accordingly, waived its rights to assert these
10 coverage defenses.

11 25. FIREMAN'S FUND adhered to its duty to defend its Insured and, in or about March
12 2007, was able to reach a settlement agreement on behalf of the Insured.

13 26. FIREMAN'S FUND indemnified the insured for the full settlement amount of
14 \$499,000.00.

15 27. After indemnifying the mutually Insured, FIREMAN'S FUND attempted informal
16 resolution of its claim against UNITED NATIONAL for its share of the settlement.

17 **FIRST CAUSE OF ACTION**
18 **Declaratory Relief: Defense Costs**
(As to Defendant United National)

19 28. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1
20 through 27 of this complaint and incorporates such by reference as though fully set forth herein.

21 29. An actual controversy of a justiciable nature now exists between FIREMAN'S FUND
22 and UNITED NATIONAL concerning the obligations owed by UNITED NATIONAL to reimburse
23 FIREMAN'S FUND for the defense costs incurred by FIREMAN'S FUND for the defense of the
24 parties' mutual Insured in the Underlying Action.

25 30. FIREMAN'S FUND seeks a declaration that, under the terms, definitions, conditions,
26 and exclusions of the policies issued by UNITED NATIONAL to the Insured, UNITED
27 NATIONAL had an ongoing duty to defend the Insured with respect to the claims asserted against it
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1 pursuant to the Underlying Action, and now has an obligation to reimburse FIREMAN'S FUND a
2 share of the defense costs incurred by FIREMAN'S FUND in defense of the mutual insured.

3 31. The controversy is of sufficient immediacy to justify the issuance of a declaratory
4 judgment.

5 32. The issuance of a declaratory judgment will resolve some or all of the existing
6 controversy between FIREMAN'S FUND and UNITED NATIONAL.

7 **SECOND CAUSE OF ACTION**
8 **Declaratory Relief: Indemnity Expenses**
9 **(As to Defendant United National)**

10 33. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1
11 through 27 of this complaint and incorporates such by reference as though fully set forth herein.

12 34. An actual controversy of a justiciable nature now exists between FIREMAN'S FUND
13 and UNITED NATIONAL concerning the obligations owed by UNITED NATIONAL to indemnify
14 the parties' mutual Insured for the settlement reached on behalf of the Insured in the Underlying
15 Action.

16 35. FIREMAN'S FUND seeks a declaration that, under the terms, definitions, conditions,
17 and exclusions of the policies issued by UNITED NATIONAL to the Insured, UNITED
18 NATIONAL had an ongoing duty to indemnify the Insured with respect to the claims asserted
19 against it in the Underlying Action, and has an obligation to reimburse FIREMAN'S FUND a share
20 of the indemnity expenses incurred in defense of the mutual Insured.

21 36. The controversy is of sufficient immediacy to justify the issuance of a declaratory
22 judgment.

23 37. The issuance of a declaratory judgment will resolve some or all of the existing
24 controversy between FIREMAN'S FUND and UNITED NATIONAL.

25 **THIRD CAUSE OF ACTION**
26 **Equitable Indemnity**
27 **(As to All Defendants)**

28 38. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1
through 27 of this complaint and incorporates such by reference as though full set forth herein.

1 39. FIREMAN'S FUND has paid sums toward the defense of the parties' mutual Insured
2 against the claims in the Underlying Action, and has paid sums to settle the claims asserted against
3 the Insured in the Underlying Action.

4 40. FIREMAN'S FUND, UNITED NATIONAL and DOES 1 - 10 are liability insurers of
5 the Insured.

6 41. UNITED NATIONAL and DOES 1 - 10 refused to defend or indemnify the parties'
7 mutual Insured on, or after, February 13, 2006, forcing FIREMAN'S FUND to pay for more than its
8 fair share of the defense and settlement of the Underlying Action on behalf of the Insured.

9 42. UNITED NATIONAL and DOES 1 to 10 are obligated to equitably indemnify
10 FIREMAN'S FUND for all defense costs and indemnity expenses incurred by FIREMAN'S FUND
11 on behalf of the parties' mutual Insured, and to pay statutory interest to FIREMAN'S FUND.

12 43. UNITED NATIONAL and DOES 1 - 10 must reimburse FIREMAN'S FUND for all
13 defense costs and indemnity expenses paid by FIREMAN'S FUND to defend the parties' mutual
14 insured in the Underlying Action, and to pay statutory interest to FIREMAN'S FUND.

15 **FOURTH CAUSE OF ACTION**
16 **Equitable Contribution**
(As to All Defendants)

17 44. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1
18 through 27 of this complaint and incorporates such by reference as though full set forth herein.

19 45. FIREMAN'S FUND has paid sums toward the defense of the parties' mutual Insured
20 against the claims in the Underlying Action, and has paid sums to settle the claims asserted against
21 the Insured in the Underlying Action.

22 46. FIREMAN'S FUND, UNITED NATIONAL and DOES 1 - 10 are liability insurers of
23 the Insured.

24 47. UNITED NATIONAL and DOES 1 - 10 refused defend or indemnify the parties'
25 mutual Insured on, or after, February 13, 2006, forcing FIREMAN'S FUND to pay for more than its
26 fair share of the defense and settlement of the Underlying Action on behalf of the Insured.

1 48. UNITED NATIONAL and DOES 1 - 10 are obligated to equitably contribute to the
2 defense costs and indemnity expenses incurred by FIREMAN'S FUND on behalf of the parties'
3 mutual Insured, and to pay statutory interest to FIREMAN'S FUND.

4 49. UNITED NATIONAL and DOES 1 - 10 must reimburse FIREMAN'S FUND for an
5 equitable portion of the defense costs and indemnity expenses paid by FIREMAN'S FUND to
6 defend the parties' mutual insured in the Underlying Action, and to pay statutory interest to
7 FIREMAN'S FUND.

8 50. This claim for equitable contribution is pleaded in the alternative to the claim for
9 equitable subrogation.

10 **FIFTH CAUSE OF ACTION**
11 **Equitable Subrogation**
12 **(As to All Defendants)**

13 51. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1
14 through 28 of this complaint and incorporates such by reference as though full set forth herein.

15 52. This claim for equitable subrogation is pleaded in the alternative to the claim for
16 equitable contribution.

17 53. FIREMAN'S FUND, UNITED NATIONAL and DOES 1 - 10 have the obligation to
18 make full payment, on behalf of the parties' mutual insured, for the full debt owed in the Underlying
19 Action.

20 54. FIREMAN'S FUND satisfied its obligation to defend and indemnify the parties'
21 mutual Insured and has paid to settle all debts owed by the Insured.

22 55. UNITED NATIONAL and DOES 1 - 10 refused to defend and indemnify the parties'
23 mutual Insured and further failed to pay their fair share of the defense costs and debts owed by
24 Insured in the Underlying Action.

25 56. FIREMAN'S FUND paid the loss in this Underlying Action, thus entitling it to the
26 rights, remedies, or securities that would otherwise belong to the debtor.

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PRAYER FOR RELIEF


WHEREFORE, FIREMAN'S FUND respectfully requests this court enter an Order and Judgment declaring as follows:

1. A judicial declaration that UNITED NATIONAL is obligated to defend the Insured for the claims in the Underlying Action at all times mentioned herein; and, is consequently obligated to reimburse FIREMAN'S FUND a portion of defense costs incurred by FIREMAN'S FUND in defense of the mutual Insured;
2. A judicial declaration that UNITED NATIONAL is obligated to indemnify the Insured for the claims in the Underlying Action at all times mentioned herein; and, is consequently obligated to reimburse FIREMAN'S FUND some or all of the indemnity payments made by FIREMAN'S FUND;
3. That FIREMAN'S FUND is entitled to complete equitable indemnification from UNITED NATIONAL and DOES 1 – 10 for all the defense costs and indemnity expenses incurred by FIREMAN'S FUND in defending and indemnifying the Insured in the Underlying Action;
4. That FIREMAN'S FUND is entitled to equitable contribution from UNITED NATIONAL and DOES 1 – 10 for defense costs and indemnity expenses incurred by FIREMAN'S FUND in defending and indemnifying the Insured in the Underlying Action;
5. Alternatively, to the extent that equitable contribution is not granted, that FIREMAN'S FUND paid the loss in this Underlying Action and is entitled to equitably subrogate the Insured's rights against UNITED NATIONAL and DOES 1 – 10 for full reimbursement of the full debt owed in defending and indemnifying the Underlying Action;
6. That FIREMAN'S FUND is entitled to interest on the reimbursement due from UNITED NATIONAL and DOES 1 to 10 at the statutory rate;
7. For FIREMAN'S FUND attorney's fees and costs incurred in this litigation; and

1 8. For such other and further monetary and equitable relief as the court deems just and
2 proper.

3 DATED: August 21, 2007

HINSHAW & CULBERTSON LLP

4 

5 CHRISTOPHER J. BORDERS

6 CASEY A. HATTON

Attorneys for Plaintiff

FIREMAN'S FUND INSURANCE COMPANY

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PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the County of San Francisco. I am over the age of eighteen years, and not a party to the within cause. My business address is 44 Montgomery Street, Suite 750, San Francisco, California 94104.

On the date set forth below I served the following document(s) described as:

**STATE-COURT NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT
UNDER 28 U.S.C. § 1441(b)**

☐ (BY FACSIMILE) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date.

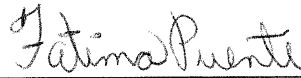
☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

ATTORNEY FOR PLAINTIFF
FIREMAN'S FUND INSURANCE COMPANY
Christopher J. Borders
Casey A. Hatton
HINSHAW & CULBERTSON LLP
One California Street
18th Floor
San Francisco, CA 94111
Tel.: (415) 362-6000
Fax: (415) 834-9070

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 24, 2007 at San Francisco, California.



Fatima Puente

United State District Court, Northern District Court No.: C 07-04943 JL

PROOF OF SERVICE

I declare that:

I am a citizen of the United States, employed in the County of San Francisco. I am over the age of eighteen years, and not a party to the within cause. My business address is 44 Montgomery Street, Suite 750, San Francisco, California 94104.

On the date set forth below I served the following document(s) described as:

**CERTIFICATE OF SERVICE OF NOTICE OF REMOVAL UNDER
28 U.S.C. § 1441(b)**

☐ (BY FACSIMILE) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date.

☐ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).


☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

☒ (BY ELECTRONIC SERVICE) by submitting an electronic version of the document(s) to be served on all parties listed on the service list on file with the court as of this date.

**Attorney for Plaintiff, Fireman's Fund Ins.
Co.**

Christopher J. Borders
Casey A. Hatton
Hinshaw & Culbertson LLP
One California Street, 18th Floor
San Francisco, CA 94111
Tel: (415) 362-6000
Fax: (415) 834-9070

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 28 2007, at San Francisco, California.



Fatima Puente